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EQUIPMENT LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT dated as of January 1, 1976, between B-W CREDIT CORPORATION, a Delaware corporation (herein called "Lessor"), and UNITED STATES RAILWAY LEASING COMPANY, an Illinois corporation (herein called "Lessee").

SECTION 1. LEASE OF EQUIPMENT.

Subject to the terms and conditions of this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the units of equipment set forth in Exhibit A hereto (herein called the "Equipment").

The manufacturer of the Equipment has agreed to tender same to Lessee at a location or locations mutually agreed upon by Lessee and Lessor. Upon such tender, Lessee will cause an authorized representative of Lessee to inspect same and if each unit of Equipment is found to conform to the specifications therefor, to accept delivery of such unit of Equipment and to execute and deliver to Lessor a Certificate of Acceptance substantially in the form attached hereto as Exhibit B, whereupon such Equipment shall be deemed to have been delivered to and accepted by Lessee. Execution of the Certificate of Acceptance shall conclusively establish, between Lessor and Lessee, that the Equipment conformed to Lessee's specifications and was in good condition and without defects upon receipt. Lessee's failure to notify Lessor of any defect or objection with respect to any unit of Equipment does not establish the absence of any such defect in any Equipment insofar as the manufacturer or vendor thereof is concerned. Lessor shall have no obligation to lease any unit of Equipment not delivered to and accepted by Lessee on or prior to February 27, 1976.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1 Rentals for Equipment. Lessee agrees to pay Lessor as rent for each unit of Equipment leased hereunder, the amounts provided for the units of Equipment in Exhibit A, payable monthly in advance, commencing on the earlier of (a) the Closing Date, or (b) March 1, 1976 (the earlier of which dates will be hereinafter referred to as the "Rental Commencement Date"). The term "Closing Date" shall mean for each unit of Equipment the date on which said unit of Equipment was settled for and payment was made to the manufacturer or vendor by Lessor.

2.2 Place of Payment. All payments provided for in this Lease to be made to Lessor shall be made to Lessor in Chicago funds in Chicago, Illinois, or at such other place as Lessor shall specify in writing, or in the absence of such specifications, by certified or cashier's check at its address set forth in Section 19.1 hereof.

2.3 Net Lease. This Lease is a net lease and Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor under this Lease or otherwise or against the vendor or the manufacturer of the Equipment; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any cause whatsoever, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is returned to Lessor.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each unit of Equipment shall begin on the date the Certificate of Acceptance is executed by Lessee as to each unit of Equipment and shall terminate 180 months after the Rental Commencement Date. No rental shall be payable, however, from the commencement of the term until the earlier of the date Lessee first uses the Equipment or the execution of the Certificate of Acceptance by Lessee, from and after which date rentals shall be payable during the term provided for in Exhibit A hereto.

### SECTION 4. TITLE TO THE EQUIPMENT.

4.1 Retention of Title. Lessor is acquiring full legal title to the Equipment and it is understood that Lessee shall acquire no right, title or interest to the Equipment except as Lessee hereunder, notwithstanding the delivery of the Equipment to and the possession and use thereof by Lessee.

4.2 Duty to Mark Equipment. Lessee shall cause each unit of Equipment to be kept plainly, distinctly, permanently, and conspicuously marked by stencil, printed in contrasting color in letters not less than one inch in height, the name and address of Lessor preceded by the words "Owned and Leased by" or other appropriate words designated by Lessor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such unit of Equipment and its rights under this Lease. Lessee shall cause the car reporting marks set forth in Exhibit A hereto to be stencilled on the Equipment and shall not change or consent to any change thereto without the prior written consent of Lessor. Lessee will not place any such unit of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked and will replace promptly any such names, numbers or words which may be removed, defaced or destroyed.

4.3 Prohibition Against Certain Designations. Except as above provided, and as permitted under any sublease, Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership.

#### SECTION 5. REPRESENTATIONS AND WARRANTIES.

5.1 Lessor hereby covenants, warrants and represents that (i) the Equipment shall be owned by it (subject to the rights granted Lessee in Section 15 hereof) and (ii) Lessor shall have the right to lease the Equipment to Lessee as provided herein. Lessee acknowledges that Lessee has selected both the Equipment and the manufacturer or vendor from whom Lessor has purchased the Equipment, and LESSEE LEASES THIS EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY OTHER AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, BY LESSOR, AND LESSOR HEREBY EXPRESSLY DISCLAIMS ANY OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, INCLUDING BUT NOT LIMITED TO, THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (C) EXCEPT AS HEREINABOVE SPECIFICALLY SET FORTH, ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. IN NO EVENT SHALL LESSOR BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHATSOEVER AND HOWSOEVER CAUSED.

Lessor hereby appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease, so long as Lessee is not in default hereunder, to assert and enforce, from time to time, in the name and for the account of Lessor and Lessee, as their interests may appear, but in all cases at the sole cost and expense of Lessee, whatever claims and rights Lessor may have as owner of the Equipment against the manufacturer or vendor thereof.

5.2 Lessee represents and warrants that:

- (a) Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Illinois;
- (b) Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which the nature of its business requires such qualification;
- (c) This Lease and all supplements and exhibits have been duly authorized, executed and delivered by Lessee and each constitutes a valid, legal and binding agreement of Lessee enforceable in accordance with its respective terms, subject as to enforceability to all applicable bankruptcy, moratorium, reorganization and other laws affecting the rights of creditors generally from time to time in effect;
- (d) No approval, consent of, or filing with, any public regulatory body is required with respect to the entering into or performance by Lessee of this Lease;
- (e) The execution and delivery by Lessee of this Lease does not violate any provision of any law, any order of any court or governmental agency, the Charter or By-Laws of Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such

indenture, agreement or other instrument and Lessee has not breached and is not in default under any such indenture, agreement or other instrument and no such indenture, agreement or instrument (other than any Sublease referred to in Section 15.3 hereof) will attach to or create a lien or encumbrance upon the Equipment;

(f) There are no suits or proceedings pending, or, to the knowledge of Lessee, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse effect on the financial condition or business of Lessee; provided, however, that Lessee and United States Railway Equipment Co. each own cars under lease to railroads in reorganization, none of which have been disaffirmed by the trustees of such lessees, and all rental payments accruing after the filing of petitions for reorganization have been paid by the respective debtor or trustees in such reorganization proceeding;

(g) There has been no material change in the financial condition or business of Lessee since the date of the last financial statements which were furnished to Lessor.

#### SECTION 6. LESSEE'S INDEMNITY.

6.1 Scope of Indemnity. Lessee shall defend, indemnify and save harmless Lessor, from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of the Equipment or any unit thereof (i) as a result of or related to the use, maintenance, repair, replacement, operation, design, condition, delivery, return or construction of the Equipment (whether defects are latent or discoverable by Lessor or by Lessee), (ii) by reason or as the result of any act or omission of Lessee for itself or as agent or attorney-in-fact for Lessor hereunder, or (iii) as a result of claims for patent infringements, or

(iv) as a result of claims for negligence or strict liability in tort arising out of any action or omissions by Lessee.

6.2 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more units of Equipment, whether by expiration of time, by operation of law or otherwise.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

Lessee agrees to comply with all governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each unit of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such unit of Equipment in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such changes, additions and replacements, without cost or expense to Lessor.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Equipment or cause same to be maintained and kept in good order, condition and repair, ordinary wear and tear excepted and suitable for use in interchange. During any storage period, Lessee shall maintain the units of Equipment in such manner as Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances.

Lessee may, from time to time, add further parts or accessories to any unit or units of Equipment provided that such additions are readily removable and do not impair the value or utility of such unit or units of Equipment; and any parts or accessories so added, if not required to be added as a replacement, shall remain the property of Lessee or other owner thereof and may be removed by Lessee at any time prior to the termination or expiration of the Lease with respect to such unit or units of Equipment, provided such removal does not damage such unit or units of Equipment and no Event of Default hereunder shall have occurred. Any parts or accessories not removed prior to delivery of such unit of Equipment to Lessor after the termination or expiration of the Lease with respect to such unit of Equipment shall become the property of Lessor. Lessee shall use or cause the Equipment to be used only within the continental limits of the United States of America or in temporary or incidental use in Canada and Lessee further covenants and agrees that none of the Equipment will be located outside the United States of America more than 40% of any calendar year.

## SECTION 9. LIENS ON THE EQUIPMENT.

Throughout the term of this Lease and during the period of any storage of the Equipment by Lessee provided for in Section 13 hereof, Lessee shall pay or satisfy and discharge any and all claims against, through or under Lessee and its successors or assigns which, if unpaid, might constitute or become a lien, encumbrance or charge upon the Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon any unit of Equipment as a result of the failure of Lessee to perform or observe any of its covenants or agreements under this Lease, but Lessee shall not be required to pay or discharge any such claims so long as it shall give notice thereof to Lessor, and in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner, and the nonpayment thereof does not, in the reasonable opinion of Lessor, adversely affect or endanger the title and interest of Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination or expiration of this Lease and shall be deemed satisfied if performed by any Sublessee permitted under Section 15.3 hereof.

## SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1 Filing. Prior to the execution of the Certificate of Acceptance of the first unit of Equipment, Lessee will, at its sole expense, cause this Lease and any Sublease then in existence as permitted in Section 15.3 hereof to be duly filed, recorded or deposited pursuant to Section 20c of the Interstate Commerce Act and will furnish Lessor with proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, re-register, redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title or interest in or to the Equipment to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filings and an opinion of Lessee's counsel that such action has been properly taken. Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording, re-recording, depositing, redepositing, registering, or re-registering of any such instruments or incident to the taking of such action.

10.2 Payment of Taxes. Lessee shall pay and discharge, when due, all license fees, assessments and sales, use, ad valorem or property and other tax or taxes (including interest, fines or

penalties in connection therewith) now or hereafter imposed by any state, Federal, foreign or local government or unit thereof upon any of the Equipment, the interest of the Lessee therein, any earnings arising therefrom, or any payments hereunder, exclusive, however, of any income, gross receipts (other than gross receipts in the nature of or in lieu of sales or use taxes), excess profits or similar taxes on the rentals herein provided (or any other such tax on the rentals or Lessor's net income therefrom) except any such tax which is in substitution for, or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided. Lessee shall be under no obligation to pay any taxes so long as it shall notify Lessor thereof and is contesting in good faith and by appropriate legal proceedings such taxes and the nonpayment thereof does not, in the reasonable opinion of Lessor, adversely affect the title, property or rights of Lessor. If any such taxes shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of invoice therefor.

In the event any reports with respect to taxes are required to be made on the basis of individual units of Equipment, Lessee will either make such reports in such manner as to show the interests of Lessor in such units of Equipment or notify Lessor of such requirement and make such reports in such manner as shall be satisfactory to Lessor. In either event, Lessee shall furnish copies of any such reports to Lessor.

In the event that, during the continuance of this Lease, Lessee becomes liable for the payment or reimbursement of any taxes, such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such taxes are paid or reimbursed by Lessee.

#### SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1 In the event Lessee shall at any time during the term hereof procure and maintain insurance specifically insuring against loss or damage to the Equipment, or against public liability and property damage arising therefrom, Lessee agrees that any such insurance shall provide for a thirty (30) day prior written notice to Lessor of any cancellation, modification or reduction of coverages, that no act or default of any person other than Lessor shall affect Lessor's right to recovery or protection under such policy in case of loss or claim, shall cover both the interest of Lessor and of Lessee in the Equipment, or, as the case may be,



shall protect Lessor and its assigns and Lessee in respect of risks arising out of the condition, maintenance, use or operation of the Equipment, and shall provide that losses, if any, in respect of the Equipment, shall be payable to Lessee and Lessor as their respective interests may appear. All proceeds of any such insurance received by Lessor with respect to any unit of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to Lessee upon proof satisfactory to Lessor that any damage to any unit with respect to which such proceeds were paid has been fully repaired, provided that no Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has occurred. Any such proceeds of insurance received by Lessor with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

11.2 Duty of Lessee to Notify Lessor. In the event that any unit of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, damaged beyond economical repair during the term of this Lease, including any renewal term hereunder, or thereafter while the unit of Equipment is in the possession of Lessee pursuant to Section 13 hereof (any such occurrence being hereinafter called a Casualty Occurrence), Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform Lessor in regard thereto and shall pay the Casualty Value (as herein defined) of such unit in accordance with the terms hereof.

11.3 Payment of Casualty Loss. Lessee shall, on the next succeeding rental payment date following the date upon which Lessee receives notice of a Casualty Occurrence with respect to any unit of Equipment, pay to Lessor (i) the rental installment due, if any, on such payment date for such unit of Equipment and (ii) the Casualty Value of such unit of Equipment less the rental attributable to such unit of Equipment for the period beginning on the date of the Casualty Occurrence and ending on the date immediately preceding such rental payment date.

11.4 Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any unit of Equipment and the rental installment due on such payment date, the obligation to pay rent for such unit of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but Lessee shall continue to pay rent for all other units of Equipment.

11.5 Disposition of Equipment. Lessee shall, as agent for Lessor, dispose of such unit of Equipment having suffered a Casualty Occurrence to itself or any third party. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, expressed or implied. As to each separate

settle and dispose of  
claims with respect to any  
Casualty Occurrence and

arms' length,

unit of Equipment so disposed of, Lessee shall, out of the proceeds, if any, of any such settlement and disposition (i) pay itself a commission equal to 7-3/4% of said proceeds for acting as agent as aforesaid, (ii) retain an amount up to the Casualty Value of such Equipment paid by Lessee to Lessor pursuant to Section 11.3 hereof and (iii) pay over to Lessor the excess of such proceeds over the sum of the amounts to be determined in accordance with clauses (i) and (ii) of this Section 11.5. In disposing of such unit of Equipment, Lessee shall take such action as Lessor shall reasonably request to terminate any contingent liability which Lessor might have arising after such disposition from or connected with such unit of Equipment.

11.6 Casualty Value. The Casualty Value of each unit of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such unit of Equipment as is set forth in the Schedule of Casualty Values attached hereto as Exhibit C opposite such date of payment.

11.7 Risk of Loss. Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any unit of Equipment from and after the date hereof and continuing until payment of the Casualty Value and the rental installments due on and prior to the date of payment of such Casualty Value in respect of such unit of Equipment has been made, such unit or the salvage thereof has been disposed of by Lessee and the title to such unit or the salvage thereof have been transferred to the purchaser of such unit or the salvage thereof.

11.8 Eminent Domain. In the event that during the term of this Lease the use of any unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, Lessee's obligation to pay rent shall continue for the duration of the term of this Lease. Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 12. REPORTS.

12.1 Duty of Lessee to Furnish. On or before April 1 in each year during the term of this Lease, Lessee will furnish to Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the units of Equipment then leased hereunder, the amount, description and numbers of all the units of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of

the Equipment as Lessor may reasonably request, (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced, and (c) describing the insurance coverage, if any, maintained by Lessee pursuant to the first paragraph of Section 11.1 hereof.

12.2 Lessor's Inspection Rights. Lessor shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to Lessor the existence, condition, and proper maintenance thereof during the continuance of this Lease.

12.3 Financial Reports. Lessee agrees that it will furnish to the Lessor, the following:

(a) As soon as available and in any event within 90 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of Lessee as at the end of such period and a statement of income and retained income of Lessee for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, the income statement setting forth increases and decreases from the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal financial officer of Lessee.

(b) As soon as available and in any event within 120 days after the last day of each fiscal year, a copy of Lessee's annual balance sheet, income statement and statement of retained income of Lessee, which statements will have been certified by a firm of independent public accountants of recognized national standing selected by Lessee covering the operations of Lessee.

(c) Within the period provided in subparagraph (b) above, a certificate, signed by the principal financial officer of Lessee, to the effect that the signer thereof has re-examined the terms and provisions of the Equipment Lease and that, at the date of said certificate and throughout the duration of said period is not aware of any de-

fault in compliance by Lessee with any of the covenants, terms and provisions of said agreement, or if the signer is aware of any such default, he shall disclose in such certificate the nature thereof.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Subject only to the provisions of Exhibit D hereof granting to Lessee the right to purchase the Equipment, upon the expiration or termination of this Lease, whether by passage of time, operation of law or otherwise; with respect to any unit of Equipment, Lessee will, at its own cost and expense, at the request of Lessor, assemble, transport and deliver possession of such unit of Equipment to Lessor at such place as Lessor shall request; but such place shall not be further from Lessor's address listed in Section 19.1 hereof than is Lessor's address in Section 19.1 hereof, and Lessor shall have the right, notwithstanding any provision in the Assignment to the contrary, to directly enforce any Sublessee's obligation to store the Equipment as provided in paragraph 17 of the Sublease. All movement of each such unit is to be at the risk and expense of Lessee.

### SECTION 14. DEFAULT.

14.1 Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 hereof or in Section 11 hereof, provided, however, that Lessee shall have five (5) days after written notice to it of such default in which to cure the same; provided, further, that Lessee shall not be entitled to cure any such default more than twelve (12) times during the term hereof, no two (2) cures to be in consecutive months; or

(b) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for thirty (30) days after written notice from Lessor to Lessee, specifying the default and demanding the same to be remedied; or

(c) Any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings

shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) Any representation or warranty of Lessee shall not have been true when made; or

(e) Lessee shall remove, transfer, encumber, part with possession, assign or sublet (except as expressly permitted by the provisions hereof) any of the Equipment or its interest hereunder.

When any Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has, to the knowledge of Lessee, occurred, Lessee agrees to give notice thereof within three (3) business days thereafter to Lessor.

14.2 Remedies. If any Event of Default has occurred and is continuing, Lessor, at its option, may, provided that Lessee does not have the right to cure such default after any notice by Lessor (subject to the rights of any Sublessee to retain possession of the Equipment so long as it is not in default under any Sublease permitted under Section 15.3 hereof):

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to Lessee, terminate this Lease, whereupon all rights of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein-after provided; and thereupon, Lessor may, by its agents, enter upon the premises of Lessee or other premises where any of the Equipment may be located

and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Equipment for any purpose whatever but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction, of which the numerator is such accrued number of days in such full rental period and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum with respect to each unit of Equipment which represents the excess of the present worth at the time of such termination, if any, of the aggregate rentals for such unit which would have thereafter accrued hereunder from the date of such termination to the end of the original term of this Lease, over the then present worth of the then fair rental value of such unit for such period. Present worth is to be computed in each case on a basis of a rate of 5% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease; and

other than for the  
payment of rental

(c) In the event of any such termination and whether or not Lessor shall have exercised or shall thereafter exercise any of its other rights under paragraph (b) above, Lessor shall have the right to recover from Lessee an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 10% investment credit attributable to 100% of the total Purchase Price of the Equipment (the "Investment Credit") allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (the

"Code"), which was lost, not claimed, not available for claim, disallowed or recaptured by or from Lessor as a result of the breach of one or more of the representations, warranties and covenants by Lessee hereunder, the termination of this Lease, Lessor's loss of the right to use any unit of Equipment, any action or inaction by Lessor or the sale or other disposition of Lessor's interest in any unit of Equipment after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of Lessor, will cause Lessor's net after tax return under this Lease to be equal to the net after tax return that would otherwise have been available to Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction authorized with respect to a unit of Equipment under Section 167 of the Code (the "Depreciation Deduction") which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a unit of Equipment as a result of the breach of one or more of the representations, warranties and covenants made by Lessee hereunder, the termination of this Lease, Lessor's loss of the right to use such unit of Equipment, any action or inaction by Lessor or the sale or other disposition of Lessor's interest in such unit of Equipment after the occurrence of an Event of Default.

Anything in Section 14 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of Lessee which results solely in the loss by Lessor of, or the loss by Lessor of the right to claim, or the disallowance with respect to Lessor of all or any portion of the Investment Credit or the Depreciation Deduction shall be, for all purposes of this Lease, deemed to be cured if Lessee shall, on or before the next rental payment date after written notice from Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit or the Depreciation Deduction, or such portion thereof, agree to pay to Lessor a lump sum with respect to the Investment Tax Credit and a revised rental rate with respect to said loss of the Depreciation Deduction so that, in the reasonable opinion of Lessor, Lessor shall have the same rate of return as though Lessor had the benefit of the Investment Credit and Depreciation Deduction.

14.3 Cumulative Remedies. The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive or alternative, but shall be cumulative and shall be in addition to

all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirement of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims of any right to assert any set-off against the rent payments due hereunder, and agrees to make the rent payment regardless of any off-set or claim which may be asserted by Lessee on its behalf in connection with the lease of the Equipment. The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

#### SECTION 15. ASSIGNMENTS - SUBLEASE.

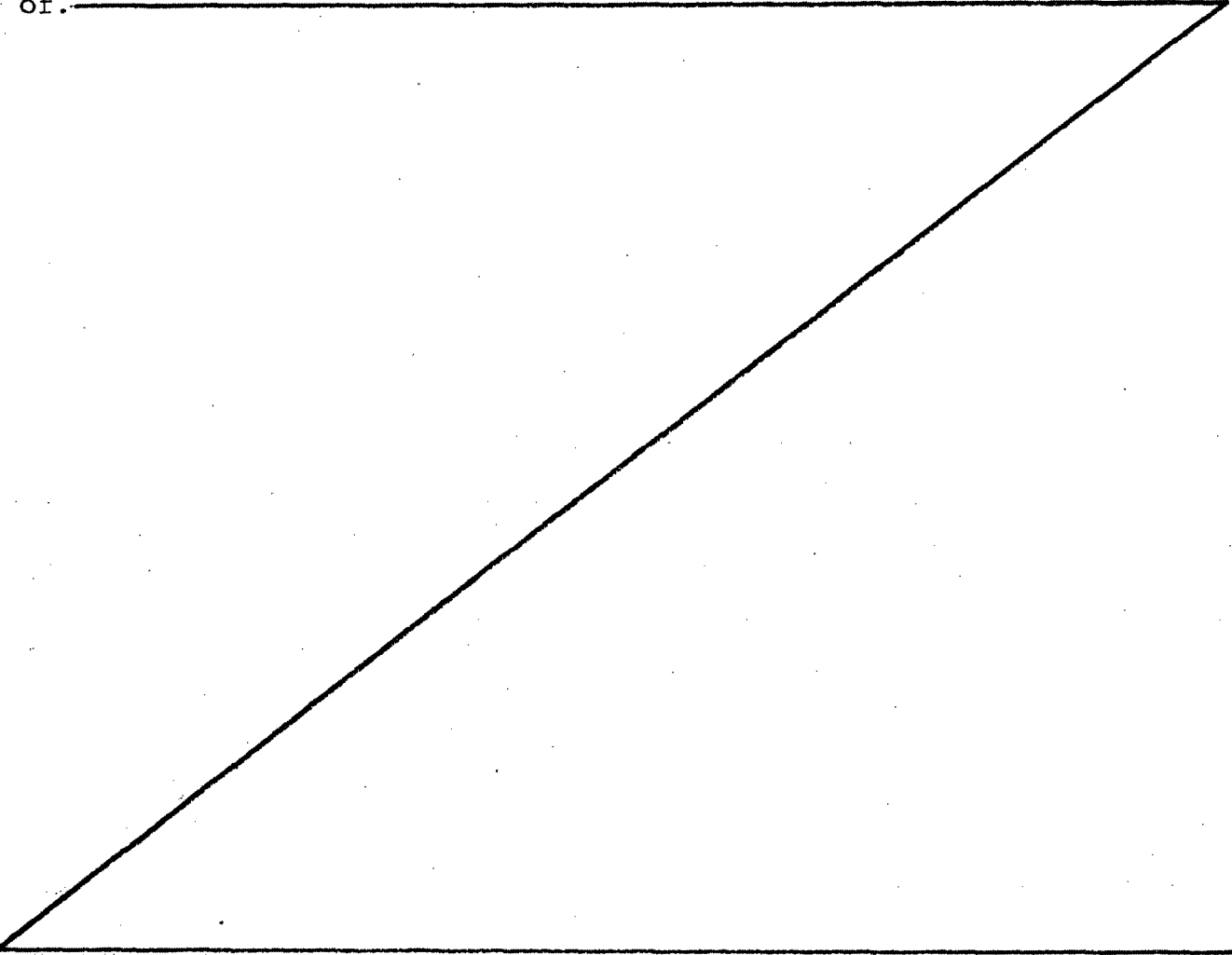
15.1 Assignments of Lessor. This Lease and the rentals and other sums due hereunder are assignable by the Lessor.

15.2 Lessee's Rights to the Equipment. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of Lessor (except as permitted in Section 15.3 hereof), Lessee shall not assign, sublet, transfer or encumber its leasehold interest or any of its rights, duties or obligations under this Lease in or relating to any of the Equipment. Lessee shall not, except as permitted in Section 15.3 hereof, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment.

15.3 Lessor agrees that its consent shall not be required with respect to any Sublease(s) of all or any part of the Equipment made by Lessee at any time or times hereunder which is substantially in the form and text attached hereto as Exhibit E. The term of any such Sublease shall not be longer than the term hereof. Lessee may grant any Sublessee an option or options to extend the term of the Sublease, subject, however, in all events, to the extension of the term hereof for a term or terms not shorter than the extended term or terms of the Sublease. So long as the rentals per car per month reserved under a Sublease are not less than the rentals per car per month reserved hereunder, or if Lessor shall give its consent thereto in writing, no default on the part of Lessee hereunder shall affect the rights of the Sublessee under any such Sublease provided such Sublessee shall not be in default of any of the terms and conditions of such Sublease. Lessee agrees with Lessor that it will



not change, amend, modify or terminate any Sublease without the prior written consent of Lessor, which consent shall not be unreasonably withheld, or receive or collect any rental payment under any Sublease prior to the date for payment thereof provided for in such Sublease. In addition, Lessee agrees to assign, but nevertheless for security purposes only, its interest in any Sublease and its rights to receive receivables due and payable thereunder to Lessor under and pursuant to an Assignment in the form and text attached hereto as Exhibit F. Lessee agrees to deliver to such Sublessee written notice of the assignment of such Sublease, together with an executed counterpart of the Assignment. If the rentals per car per month reserved under any Sublease are less than the rentals per car per month reserved hereunder or if the Lessor has refused to give the consent referred to in the fourth sentence of this Section 15.3, the Assignment to be executed and delivered by Lessee shall be modified to delete from page 6 thereof the provisos contained in the first sentence thereof.



SECTION 16. OPINION OF LESSEE'S COUNSEL.

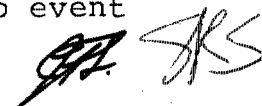
On or prior to each Closing Date, Lessee will deliver to Lessor the written opinion of counsel for Lessee, addressed to Lessor, in scope and substance reasonably satisfactory to Lessor, to the effect that:

(a) the matters stated in Subsections 5.2(a)-(e) hereof are true and correct.

(b) This Lease and any Sublease permitted under Section 15.3 hereof have been filed and recorded pursuant to Section 10.1 hereof, and no other filing, recording or depositing is necessary to protect Lessor's title to the Equipment.

(c) Except as permitted under Section 15.3 hereof, the Equipment is not subject to any lien or encumbrance or any claim of third persons.

SECTION 17. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by Lessor on behalf of Lessee, shall result in the additional obligation on the part of Lessee to pay an amount equal to one percentage point over the then prime rate charged by The First National Bank of Chicago per annum to its best commercial customers on short term transactions (or the lawful rate, whichever is less) provided, however, if The First National Bank of Chicago ceases to publish such prime rate during the term of this Lease, the prime rate used shall be that of the largest banking institution in Chicago, Illinois, which is then publishing a prime rate, on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid, but in no event shall the interest on ~~overdue~~ <sup>such</sup> amounts be less than 10%. 

SECTION 18. FEDERAL INCOME TAXES.

Lessor, as the owner of each unit of Equipment, shall be entitled to such deductions, credits or other benefits as are provided by the Code (as defined in Section 14.2(c) hereof) to an owner of property, including (without limitation) an allowance for the Investment Credit (as defined in Section 14.2(c) hereof) and the Depreciation Deduction (as defined in Section 14.2(c) hereof) calculated pursuant to the most accelerated method of depreciation as provided in Section 167(b) of the Code with respect to the units of Equipment.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Equipment.

Lessee represents and warrants that (i) none of the units of Equipment constitutes property, the construction, reconstruction or erection of which was completed or acquired before January 21, 1975; (ii) at the time Lessor becomes the owner of the units of Equipment, the purchase price of the units of Equipment will qualify as "new Section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time Lessor becomes the owner of the units of Equipment, the units of Equipment will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Lessor and the units of Equipment are depreciable as provided in Section 167(b) of the Code as amended to the date hereof; (iv) at the time Lessor becomes the owner of the units of Equipment, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to the units of Equipment; and (v) at all times during the term of this Lease, Lessee will do nothing which will cause the units of Equipment to cease to be "Section 38 property" within the meaning of Section 48(a) of the Code.

In the event that the expected tax benefits described above shall be disallowed to Lessor, then Lessee shall pay as hereinafter provided to Lessor, a revised rental in respect of the Equipment so that Lessor, in the reasonable opinion of Lessor, shall have the same after-tax rate of return on a discounted cash flow basis as would have been realized by Lessor if Lessor had suffered the loss of all the deductions, credits or other tax benefits set forth in the first full paragraph of this Section 18.

For the purposes of this Lease, the date that the increased rentals shall commence is thirty (30) days from written notice by Lessor to Lessee of a loss of right to claim investment tax credit or accelerated depreciation, or thirty (30) days prior to the time Lessor pays the additional tax and interest,

whichever occurs later. Notwithstanding anything contained herein to the contrary, Lessee shall not be required to pay the foregoing amounts if the loss results from the occurrence of any of the following events: (i) a disqualifying disposition due to sale of any unit or the lease thereof by Lessor prior to any default by Lessee, or (ii) a failure of Lessor to timely claim investment tax credit or maximum depreciation for any unit in the appropriate tax return of Lessor (or the consolidated Federal taxpayer group of which Lessor is part), or (iii) a disqualifying change in the nature of Lessor's business or liquidation thereof, or (iv) any other acts or omissions of the Lessor prior to any default by Lessee (including acts or omissions by other parties included in Lessor's consolidated Federal income tax return), or (v) changes in the tax rates, laws, regulations, decisions, rulings, or orders subsequent to the date of this Lease.

In the event that the rental payable hereunder is revised as described above or in Section 14 hereof so that Lessor shall have the same after-tax net rate of return as would have been realized by Lessor if Lessor had been entitled to utilize all of the Depreciation Deduction and the Investment Credit, then the applicable Casualty Values set forth in Exhibit C shall also be adjusted by such amount as will, in the reasonable opinion of Lessor, cause Lessor's after-tax net rate of return on a discounted cash flow basis to equal that which would have been realized had Lessor been entitled to utilize all of the Depreciation Deduction and the Investment Credit.

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of Lessor's Depreciation Deduction and/or the Investment Credit in respect of any Equipment, Lessor agrees to take such action in connection with contesting such claims as Lessee shall reasonably request from time to time; provided, however, that: (i) within thirty (30) days after notice by Lessor to Lessee of such claim, Lessee shall make request that such claim be contested; (ii) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay (in which event the additional rental provided for in this Section 18 will become due and payable) the tax claimed, and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, Lessee shall have furnished Lessor with an opinion of independent tax counsel who shall be satisfactory to Lessor, to the effect that a meritorious defense exists

to such claim; and (iv) Lessee shall have indemnified Lessor in a manner satisfactory to it for any liability or loss which Lessor may incur as the result of contesting such claim and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements, and (B) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, Lessor agrees promptly to notify Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least thirty (30) days after the giving of such notice and agrees to give to Lessee any relevant information relating to such claim which may be particularly within the knowledge of Lessor, and shall otherwise be cooperative with Lessee in good faith in order to effectively contest any such claim.

The obligations and liabilities of Lessee under this Section incurred during the term of this Lease shall continue in full force and effect, notwithstanding the termination of this Lease whether by expiration of time, by operation of law or otherwise unless and until expressly released by Lessor.

#### SECTION 19. MISCELLANEOUS.

19.1 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

If to Lessor:	B-W Credit Corporation One IBM Plaza Chicago, Illinois 60611 Attention: Vice President and General Manager
---------------	--

If to Lessee:	United States Railway Leasing Company 2200 East Devon Avenue Des Plaines, Illinois 60018
---------------	--

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

19.2 Execution in Counterparts. This Lease, and any supplement hereto, may be executed in several counterparts, each of

which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. Although this Lease is dated January 1, 1976, for convenience, the actual date or dates of execution hereof by the parties hereto is the date or dates stated on the acknowledgements hereto.

19.3 Law Governing. This Lease shall be construed in accordance with the laws of Illinois.

19.4 Severability. Any provision of this Lease which is prohibited and unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19.5 Use of Equipment Beyond Lease Term. If Lessee uses any unit of Equipment beyond the term of lease with respect thereto, the obligations of Lessee (including the obligation to pay rent at the rate stated in Section 2 hereof) hereunder shall continue; provided, however, that such use shall not be construed as a renewal of such term of lease nor as a waiver of any right of or obligation to Lessor hereunder, and Lessor may take possession of such unit at any time upon demand. If Lessee shall fail to comply with Section 13 hereof within thirty (30) days after demand by Lessor, Lessor may charge and collect, as liquidated damages and not as a penalty, the sum of \$10.55 per day\* for each day after demand, until and including the day on which Lessee complies with Section 13 hereof.

19.6 Time of the Essence. Time is of the essence of this Lease.

19.7 "Day" and "Business Day". Whenever used in this Lease the word "day" shall mean "calendar day" unless modified by the word "business". "Business day" means a day when Lessor's Home Office is open for business with the public.

19.8 Further Assurances. Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order fully to effect the purposes of this Lease and to protect the Lessor's interest in the Equipment, including, but not limited to, furnishing any and all information necessary to enable Lessor to properly complete and file any and all state or political subdivision thereof income tax returns in connection herewith.

\*or the then fair rental value of the Equipment per car per day, whichever is greater,

If after an Event of Default, Lessee shall fail to make any payment or perform any act required by this Lease, Lessor may, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Lessee, without demand upon Lessee and without waiving or releasing any obligation or default. Lessor intends to reasonably promptly provide Lessee with written notice of its intention to make any such payment or perform any such act, but in no event shall said written notice be construed to be a condition precedent to Lessor (i) so paying or performing, or (ii) being indemnified pursuant to the immediately following sentence. Lessee shall indemnify and hold harmless Lessor from and against all losses and expenses (including, but not limited to, attorneys' fees) suffered or incurred by Lessor by reason of any acts performed by it pursuant to this section and Lessee shall pay to Lessor, upon demand, all sums so expended by Lessor or with respect to which it shall be entitled to be indemnified, plus interest thereon, at the rate listed in Section 17 from the date on which such sums are expended by Lessor to the date on which Lessee pays the same to Lessor.

19.9 Entire Agreement. This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Equipment and supersedes all other agreements, oral and written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

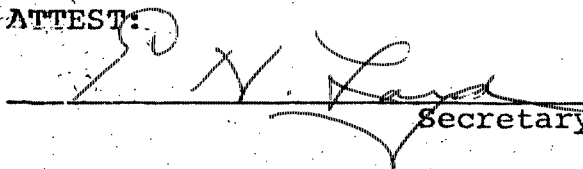
B-W CREDIT CORPORATION

[ S E A L ]

By: 

Vice President

ATTEST:

  
Secretary

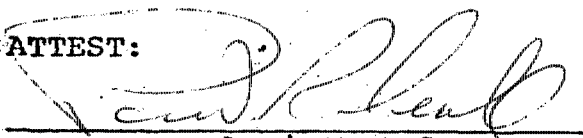
UNITED STATES RAILWAY LEASING COMPANY

[ S E A L ]

BY: 

Vice President

ATTEST:

  
Assistant Secretary

STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

On this 30th day of January, 1976 before me personally appeared R.V. Salamone, to me personally known, who, being by me duly sworn, says that he is the Vice President of B-W Credit Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Stuart R. Schwartz  
Notary Public

(SEAL)

My Commission Expires: May 1, 1976

STATE OF ILLINOIS     )  
                              ) SS:  
COUNTY OF COOK        )

On this 30th day of January, 1976, before me personally appeared G.D. Polakowski, to me personally known, who being by me duly sworn, says that he is a Vice President of United States Railway Leasing Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Constance Reichel  
Notary Public

(SEAL)

My Commission Expires: 8/14/76

Equipment Lease dated as of January 1, 1976.



EXHIBIT A to Equipment Lease dated as of January 1, 1976.

MANUFACTURER OR VENDOR:

U. S. RAILWAY MFG. CO.

DESCRIPTION OF EQUIPMENT:

75 new 100-ton coil steel cars with lift off covers, bearing car reporting marks MILW 92200 to 92274, both inclusive.

PURCHASE PRICE: \$33,343.32/car -- total price \$2,500,749.00

DELIVER TO: Bensenville, Illinois

ESTIMATED DELIVERY DATES: January 28, 1976

OUTSIDE DELIVERY DATE: February 27, 1976

RENTAL PAYMENTS: 180 consecutive monthly payments of \$321.26 per Car per month.

CERTIFICATE OF ACCEPTANCE

TO: U.S. Railway Mfg. Co. ("Manufacturer" or "Vendor")  
B-W Credit Corporation

I, a duly appointed inspector and authorized representative of United States Railway Leasing Company ("Lessee"), do hereby certify that I have received, approved and accepted delivery, on behalf of the Lessee under the Equipment Lease dated as of January 1, 1976 between the Lessor and the Lessee, of the following units of Equipment ("Equipment") which units have been inspected prior to or concurrently with such acceptance:

TYPE OF EQUIPMENT: NEW:

PURCHASE PRICE \$2,500,749.00

MANUFACTURER: U. S. Railway Mfg. Co.

PLACE ACCEPTED: Bensenville, Illinois

DATES ACCEPTED: \_\_\_\_\_

NUMBER OF ITEMS: 75

NUMBERED: MILW 92200 - 92274

I do further certify that the foregoing equipment is in good order and condition, and conforms to the specifications and standards for new equipment applicable thereto, and to all requirements of law for equipment of this nature, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each unit of Equipment the following legend in letters not less than one inch in height: "OWNED AND LEASED BY BORG-WARNER LEASING DIVISION OF B-W CREDIT CORPORATION, CHICAGO, ILLINOIS".

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer or Vendor for warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Inspector and Authorized Representative  
of Lessee

SCHEDULE OF CASUALTY VALUES

<u>RENTAL PAYMENT NUMBER</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
1	105.11
2	105.30
3	105.49
4	105.67
5	105.77
6	105.83
7	105.89
8	106.00
9	106.11
10	106.21
11	106.32
12	106.42
13	106.51
14	106.61
15	106.77
16	106.92
17	107.03
18	107.13
19	107.11
20	107.08
21	107.05
22	106.97
23	106.89
24	106.80
25	106.66
26	106.52
27	106.33
28	106.28
29	106.19
30	106.09
31	106.04
32	105.99
33	105.94
34	105.87
35	105.80
36	105.73
37	99.97
38	99.88
39	99.78

SCHEDULE OF CASUALTY VALUES

<u>RENTAL PAYMENT NUMBER</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
40	99.67
41	99.57
42	99.45
43	99.33
44	99.21
45	99.08
46	98.94
47	98.79
48	98.64
49	98.48
50	98.31
51	98.14
52	97.96
53	97.78
54	97.59
55	97.39
56	97.19
57	96.98
58	96.77
59	96.55
60	96.32
61	90.42
62	90.18
63	89.93
64	89.67
65	89.41
66	89.15
67	88.88
68	88.60
69	88.32
70	88.03
71	87.74
72	87.44
73	87.14
74	86.83
75	86.51
76	86.19
77	85.86
78	85.53



SCHEDULE OF CASUALTY VALUES

<u>RENTAL PAYMENT NUMBER</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
79	85.19
80	84.85
81	84.49
82	84.14
83	83.78
84	83.40
85	77.37
86	76.98
87	76.59
88	76.20
89	75.80
90	75.39
91	74.98
92	74.57
93	74.14
94	73.72
95	73.29
96	72.84
97	72.40
98	71.95
99	71.49
100	71.02
101	70.55
102	70.08
103	69.60
104	69.12
105	68.63
106	68.14
107	67.64
108	67.13
109	66.63
110	66.11
111	65.59
112	65.06
113	64.53
114	64.00
115	63.47
116	62.94
117	62.39

SCHEDULE OF CASUALTY VALUES

<u>RENTAL PAYMENT NUMBER</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
118	61.86
119	61.31
120	60.76
121	60.21
122	59.66
123	59.09
124	58.52
125	57.95
126	57.38
127	56.81
128	56.23
129	55.65
130	55.07
131	54.48
132	53.89
133	53.30
134	52.70
135	52.09
136	51.47
137	50.86
138	50.24
139	49.63
140	49.01
141	48.38
142	47.75
143	47.12
144	46.48
145	45.84
146	45.20
147	45.54
148	43.88
149	43.22
150	42.55
151	41.89
152	41.22
153	40.54
154	39.87
155	37.18
156	38.49

SCHEDULE OF CASUALTY VALUES

<u>RENTAL PAYMENT NUMBER</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
157	37.80
158	37.11
159	36.40
160	35.68
161	34.98
162	34.26
163	33.54
164	32.82
165	32.09
166	31.36
167	30.63
168	29.88
169	29.14
170	28.39
171	27.63
172	26.85
173	26.09
174	25.31
175	24.55
176	23.77
177	22.98
178	22.19
179	21.40
180	20.96
181	20.00



Exhibit D to Equipment Lease dated as of January 1, 1976

Upon the expiration of this Lease, provided this Lease has not been earlier terminated and United States Railway Leasing Company ("Lessee") is not in default hereunder, Lessee shall have the following option:

(a) Lessee shall have the right to purchase all but not less than all of the units of Equipment then leased hereunder at the end of the Rental period for a price equal to the then Fair Market Value of such units (as hereinafter defined). Lessee shall give B-W Credit Corporation (the "Lessor") written notice of any such election not less than six months prior to the expiration of the term of this Lease. Payment of the Fair Market Value shall be made at the place of payment specified in Section 2 of the Lease in immediately available funds against delivery of a bill of sale warranting title to the purchaser thereof transferring and assigning to Lessee full and marketable right, title and interest in and to such units of Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which Lessee assumed or is obligated to discharge under the terms of the Lease. Lessor shall not be required to make any representation or warranty as to the condition of such units of Equipment.

(b) The Fair Market Value of a unit of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell. If on or before 150 days prior to the expiration of the term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of a unit of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser, at the expense of Lessee. Said Appraiser shall be instructed to determine Fair Market Value



before the earlier of: 1) 30 days from the date on which he is hired or 2) 60 days prior to the expiration of the term of this Lease and b) promptly communicate such Fair Market Value to Lessee and Lessor in writing. The term "Appraiser" shall mean such independent appraiser as Lessor and Lessee may mutually agree upon, or failing such agreement within 30 days, a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected.

(c) Notwithstanding any undertaking of Lessee to purchase as provided hereunder, the provisions of Section 11 of the Lease shall continue in full force and effect until the date of purchase and the passage of ownership of the units of Equipment purchased by Lessee upon such date.

**SUBLEASE**

AGREEMENT made and entered into this first day of January, 1976,  
between

**UNITED STATES RAILWAY LEASING COMPANY**  
an Illinois corporation (hereinafter called "United") and

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY  
(hereinafter called "Lessee")

**RECITALS**

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

**AGREEMENT**

It is Agreed:

1. *Lease of Cars.* United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United the Cars (the term "Cars" and other terms used herein are defined in Paragraph 28 hereof). The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3.

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible. United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after February 27, 1976.  
Initial delivery shall be f.o.t. Bensenville, Illinois

From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse United for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from any repair shops, storage or terminal facilities.

3. *Condition of Cars - Acceptance.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit A; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five (5) days after United shall give Lessee notice that some or all Cars are ready for initial delivery, Lessee may have its authorized representative inspect such Cars at (the point of delivery) ~~(the manufacturer's plant)~~ and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. Lessee shall issue and deliver to United with respect to all Cars accepted, a Certificate of Inspection and Acceptance in the form of Exhibit B.

\*Strike inapplicable material in Paragraph 3.

4. **Use and Possession.** Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car (a) on its own property or lines; or (b) upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in Canada; and (v) in such service as will not constitute a "unit train" nor in such service as will employ more than ten percent of the Cars as part of any one train, except as same results from interchange practices beyond Lessee's control.

temporary or  
incidental  
use in

5. **Term.** This Lease shall be for a term which shall commence on the date of delivery by United of the first Car, as provided in Paragraph 2 hereof, and shall terminate fifteen(15) years from the Average Date of Delivery unless sooner terminated in accordance with the provisions of this Lease or unless extended pursuant to written agreement of the parties.

6. ~~REPAIRS. Lessee shall perform or cause to be performed and shall pay all costs and expenses of, all Repair Work without any abatement in rent or other loss, cost or expense to United. Any parts, replacements or additions made to any car shall be accessions to such car and title thereto shall be immediately vested in United without cost or expense to United.~~

See Rider Paragraph R-1

7. **Payment.** Lessee shall make payment of all sums due hereunder to United in Chicago funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly in advance on or before the first day of each month for which such rental is due, except that the first full month's payment shall include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** Lessee shall perform or cause to be performed and shall pay all costs and expenses of, all Repair Work without any abatement in rent or other loss, cost or expense to United. Any parts, replacements or additions made to any car shall be accessions to such car and title thereto shall be immediately vested in United without cost or expense to United.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. **No Abatement of Rent.** Rental payments on any Car shall not abate if such Car is out of service for Repair Work nor on account of any other reason whatsoever.

12. **Taxes.** Lessee shall be liable for and pay or reimburse United for payment of all Federal, State or other governmental charges or taxes assessed or levied against the Cars, including but not limited to (i) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease; (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof; and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars. If any levy or assessment is made against United or which United shall pay on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals hereunder or the net income of United therefrom (except any

Lessee acknowledges that its interest is that of a sublessee and that all of its rights hereunder are subject and subordinate to those of United's lessor and any assign of such lessor rights, except as provided in Rider R-2.

interest in

provided, however, that Lessee agrees that none of the Cars will be physically located outside of the United States more than 40% of any calendar year and Lessee shall indemnify and hold United harmless for any loss, cost or expense suffered by United under the provisions of any lease or other instrument whereby United shall have obtained its rights to the Cars or suffered by United on account of the loss of any tax benefit or otherwise by reason of the breach by Lessee of this undertaking;

such tax on rentals which is in substitution for, or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), Lessee will promptly pay or reimburse United for same; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of United, the rights or interest of United in and to the Cars will be materially endangered. In the event any tax reports are required to be made on the basis of individual Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by Owner or will notify United of such requirements and will make such report in such manner as shall be satisfactory to United.

13. *Liens.* Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

interest or  
Owner's

14. *Indemnities — Patent Covenants.* Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, and without regard as to how such charge, claim, proceeding suit or other event arose, including without limiting the generality of the foregoing, whether it arises from latent or other defects which may or may not have been discoverable by United. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate any rights which Lessee may have under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Lettering — Inventory.* At United's election all cars may be marked with United's name designating it as owner or Lessor and may bear the following inscription: "Title to this car subject to documents recorded under Section 20c of Interstate Commerce Act". Except for renewal and maintenance of the aforesaid lettering or lettering showing the interest of the Lessee, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

or Owner's

16. *Loss, Theft or Destruction of Cars.* In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise United of such occurrence. Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by United, promptly make payment to United in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This Lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent of any casualty occurrence, the risk of which shall be borne by Lessee; provided, however, that this Lease shall terminate with respect to a Casualty Car on the date United shall receive all amounts and things granted it on account of such Car under this Paragraph 16 and Lessee shall have no further liability to United hereunder except for accrued rent and as such arises or exists under Paragraphs 12, 13 and 14 hereof.

17. *Return of Cars.* Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United at such car shop, storage or terminal facility as it may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, working order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no Repair Work. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. If United shall so request by notice delivered prior to surrender of possession of such Car as above provided, Lessee shall provide suitable storage for such Car for a period of ninety (90) days from the date of expiration or termination and inform United of the place of storage and the reporting number of the Car there stored. Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 17 and such storage shall be at the risk of United. Upon termination of the storage period or upon request of United prior thereto, Lessee shall cause the Car to be transported to United as above provided.

on the lines of  
the Lessee

18. *Default.* If Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by ~~or against~~ Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may:

after notice  
from United

(a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this Lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which United may sustain by reason of Lessee's default or on account of United's enforcement of its remedies hereunder;

(b) elect only to terminate the Lessee's right of possession (but not to terminate the Lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder, or hereafter to accrue for the remaining term of the Lease, and thereupon require Lessee to deliver all such Cars to United at such places as it may designate or to take possession itself, of any or all of the Cars wherever same may be found. United may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to United or are repossessed, United shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorney's fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. United shall not be required to accept or receive any lessee offered by Lessee, or do any act whatsoever or exercise any diligence whatsoever in or about the procuring of another lessee to mitigate the damages of the Lessee or otherwise. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

on the lines  
of the Lessee

(c) declare this Lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of bargain and not as a penalty, the Present Worth, as of the date of such termination, of the excess, if any, of the total remaining rentals reserved under the Lease from the date of such termination to the expiration date of the then current term of the Lease over the fair rental value of the Cars for such period;

or if a proceeding shall have been commenced against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or Trustee of Lessee or its property and the continuance of any such proceeding or any order or decree continuing same shall be unstayed and in effect for at least thirty (30) days,

(d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

**invalid or** The remedies provided in this Paragraph 18 in favor of United shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in United's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

19. *Sublease and Assignment.* The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of United; provided, however, that Lessee shall have the right to assign all of its rights under this Lease to another railroad corporation which succeeds to all or substantially all of the business of Lessee, provided such successor shall expressly assume all of the obligations and liabilities of Lessee hereunder;

**the Owner or** (b) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.* Upon the request of United or its assignee at any time or times, Lessee will deliver to United a favorable opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary validly to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease;

(d) neither Lessee nor its counsel know of any requirement for recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Owner or its assignee in the United States of America; and

interest o  
United and  
the

(e) no governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: 2200 East Devon Avenue  
Des Plaines, Illinois 60018  
Union Station

Lessee at: 516 West Jackson Blvd.

Chicago, Ill. 60606

Attn: Vice President - Finance and Accounting

or at such other address as either party may from time to time designate by such notice in writing to the other.

22. *Warranty — Representations.* United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in Exhibit A, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. Lessee represents that all of the matters set forth in Paragraph 20(a) through and including (e) shall be and are true and correct at all times that any Car is subject to this Lease,

23. *Governing Law — Writing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. *Severability — Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to

provided, that if any matter set forth in subsections (d) or (e) of Paragraph 20 shall prove, at any time, to be untrue or incorrect by reason of any change in law, Lessee shall have thirty (30) days from the date such matter became untrue or incorrect within which to comply with such new law in order to make the substance of such representation and warranty true and correct.

pay also an amount equal to ten per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time during which overdue and unpaid.

28. *Definitions.* For all purposes of this Lease the following terms shall have the following meaning:

(a) "Cars" — railroad cars of the type, construction and such other description as is set forth in Exhibit A.

(b) "Interchange Rules" — all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the American Association of Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(c) "Average Date of Delivery" — that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Inspection and Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(d) "Repair Work" — All repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good condition, working order and repair (wear and tear from ordinary use and the passage of time excepted), in compliance with Interchange Rules in effect from time to time and complete with all devices, appliances appurtenances and parts with which the Cars were initially equipped or which from time to time may be required by Interchange Rules.

(e) "Casualty Cars" — Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(f) "Replacement Cars" — Cars of substantially similar description and specifications to that set forth in Exhibit A which are substituted for Casualty Cars.

(g) "Present Worth" — An amount equal to the excess of the total remaining rentals over the fair rental value all as determined in Paragraph 18(c), discounted five percent per annum compounded annually.

(h) "Owner" — shall mean United's lessor or such other party as shall, from time to time, have title to the Cars.

29. *Benefit.* Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.



30. *Recording.* Upon request by United, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

UNITED STATES RAILWAY LEASING COMPANY  
an Illinois corporation

By \_\_\_\_\_  
\_\_\_\_\_  
President

[SEAL]

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
Secretary

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

a(n) \_\_\_\_\_ corporation

By \_\_\_\_\_  
\_\_\_\_\_  
President

[SEAL]

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
Secretary

STATE OF ILLINOIS }  
COUNTY OF COOK } ss

On this.....day of....., 19....., before me personally  
appeared .....  
to me personally known, who being by me duly sworn says that he is.....President of the  
United States Railway Leasing Company, and....., to me personally known  
to be the.....Secretary of said corporation, that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation, that said instrument was signed and  
sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged  
that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
*Notary Public*

STATE OF }  
COUNTY OF } ss

On this.....day of....., 19....., before me personally  
appeared.....  
to me personally known, who being by me duly sworn, says that he is.....  
President of.....  
....., and .....  
to me personally known to be the.....Secretary of said corporation, that the  
seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instru-  
ment was signed and sealed on behalf of said corporation by authority of its Board of Directors,  
and they acknowledged that the execution of the foregoing instrument was the free act and deed  
of said corporation.

.....  
*Notary Public*

EXHIBIT A

Lease dated January 1, 1976, by and between United States Railway  
Leasing Company, ("United") and Chicago, Milwaukee, St. Paul ("Lessee")  
& Pacific Railroad Company,

TYPE AND DESCRIPTION OF CAR: New 100 ton 48'0" trough lift-off  
cover coil cars

NUMBER OF CARS: Seventy Five (75)

INTERIOR EQUIPMENT: None

SPECIAL LININGS: None

PERMITTED LADING USE: Coil Steel

REPORTING NUMBERS AND MARKS: Milw 92200 - Milw 92274

SPECIFICATIONS DESIGNATED BY LESSEE: Cars painted per Lessee's  
specifications.

EXHIBIT B

Lease dated January 1, 1976, by and between United States Railway Leasing Company ("United") and Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Lessee")

CERTIFICATE OF INSPECTION AND ACCEPTANCE

\_\_\_\_\_, 19\_\_\_\_

United States Railway Leasing Company  
2200 East Devon Avenue  
Des Plaines, Illinois 60018

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of Seventy Five (75) Cars bearing numbers as follows:

Milw 92200 to 92274

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease, and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each Car with the words

Owned and Leased by  
Borg-Warner Leasing  
Division of B-W Credit Corp.  
Chicago, Illinois  
Title to this Car subject to documents recorded  
under Section 20c of Interstate Commerce Act

in readily visible letters not less than one inch (1") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

\_\_\_\_\_  
Lessee

RIDER consisting of one (1) page attached to and made a part of Sublease dated January 1, 1976, by and between UNITED STATES RAILWAY LEASING COMPANY ("United") and CHICAGO, MILWAUKEE, ST. PAUL, AND PACIFIC RAILROAD COMPANY ("Lessee").

R-1. Rentals. During the term of this Lease, Lessee shall pay to United for each car the following rentals per car per month for the following periods:

	\$
From the date of delivery thereof to the fifth anniversary of the Average Date of Delivery	\$ 440.40
From the fifth anniversary of the Average Date of Delivery to the tenth anniversary of the Average Date of Delivery	\$ 400.10
From the tenth anniversary of the Average Date of Delivery until the Date of Termination	\$ 340.60

R-2. Sublease. Lessee acknowledges that United's right, title and interest in the Cars shall be either that of the owner of the Cars or may be that of a lessee under and pursuant to that certain Lease by and between United as lessee and B-W Credit Corporation as Lessor dated as of January 1, 1976. ~~Lessee further acknowledges that a copy of said Lease has been exhibited to it and that it is familiar with the terms thereof.~~ United intends to assign this Sublease to B-W Credit Corporation under the Lease between said parties. United, Lessee and B-W Credit Corporation have, pursuant to and as a part of said Assignment, acknowledged that the rights of Lessee hereunder are subject and subordinate to the rights of B-W Credit Corporation as Lessor under the Lease; provided, however, that so long as Lessee shall not be in default under any of the terms and conditions of this Sublease, it shall be entitled to quiet possession of the Cars and all other rights afforded Lessee hereunder, all as is more particularly set forth in said Assignment.

R-3. Lessor Representation. Lessor represents that:

(a) Lessor is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary validly to enter into this Lease and carry out its obligations hereunder.

(b) this Lease has been duly executed on behalf of Lessor and constitutes the legal, valid and binding obligation of Lessor, enforceable in accordance with its terms, subject as to enforceability to all applicable bankruptcy, moratorium, reorganization and other laws affecting the rights of creditors generally from time to time in effect.

ASSIGNMENT OF SUBLEASE AND AGREEMENT

THIS ASSIGNMENT OF SUBLEASE AND AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, by UNITED STATES RAILWAY LEASING COMPANY, an Illinois corporation having its principal office in Chicago, Illinois (hereinafter called "Assignor") to B-W CREDIT CORPORATION, a Delaware corporation having its principal offices in Chicago, Illinois (hereinafter called "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor does desire that Assignee purchase a total of seventy-five (75) new coil steel railroad cars with lift-off cover costing a total of approximately \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (hereinafter called the "Cars"), from U. S. Railway Mfg. Co. for purposes of leasing such Cars to Assignor;

WHEREAS, if Assignee is willing to purchase such Cars, and lease the same unto Assignor over a \_\_\_\_\_ (\_\_\_\_) year term. Assignor does further desire to sublease such Cars to Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the "Sublessee"), pursuant to a Sublease Agreement (hereinafter called the "Sublease") to be entered into between Assignor, as sublessor, and Sublessee;

WHEREAS, Assignee is willing to purchase such Cars as aforesaid, and to lease the same unto Assignor pursuant to an Equipment Lease Agreement (hereinafter called the "Lease") to be entered into between Assignor and Assignee, if, and only if, Assignor will agree to enter into the Sublease with Sublessee in the same format as Exhibit A to the Lease, and will further assign unto Assignee, but nevertheless for security purposes only, Assignor's rights as sublessor in the Sublease with Sublessee;

NOW, THEREFORE, to induce the Assignee to purchase the Cars and lease them to Assignor, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As security for the full, faithful and timely payment of all rent and other amounts due under the Lease, Assignor hereby irrevocably assigns, transfers, and sets over unto Assignee all of Assignor's right, title and interest in, and to, the

Sublease, with respect to the Cars, together with all rights, power, privileges, and other benefits of the Assignor, as sublessor under the Sublease, as they relate to the Cars, including (without limitation) the immediate right to receive and collect all rentals and other sums payable to or receivable by the Assignor, with respect to the Cars, under or pursuant to the provisions of the Sublease, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of a default or an event of default under the Sublease, with respect to the Cars, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under the Sublease with respect to said Cars.

2. The assignment made hereby is executed only as security for the payment to Assignee by Assignor of all rents and other sums, if any, due under the Lease, and, therefore, the execution and delivery of this Assignment and Agreement shall not subject Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Assignor as sublessor under the Sublease with respect to the Cars, it being understood and agreed that notwithstanding this Assignment, all obligations of the Assignor to the Sublessee under the Sublease with respect to the Cars shall be and remain enforceable by the Sublessee, its successors and assigns, against, and only against, Assignor.

3. Assignor covenants and agrees that it will perform all of its obligations to be performed under the terms of the Sublease with respect to the Cars, and hereby irrevocably authorizes and empowers Assignee, in its own name, or in the name of Assignor, on the happening of any failure by Assignor to perform any such obligation(s), to perform or cause the same to be performed, at Assignor's expense.

4. Upon the full discharge and satisfaction of all of the obligations of Assignor, as Lessee under the Lease, the assignment made hereby and all rights herein assigned to Assignee shall cease and terminate, and all estate, right, title and interest of Assignee in and to the Sublease shall revert to Assignor.

5. Assignor hereby warrants and covenants (a) that the Sublease is on file with the Interstate Commerce Commission, is not in default, and based on the opinion of counsel for the Sublessee, is valid, in full force and effect and is enforceable in accordance with its terms (subject only to bankruptcy, insolvency and reorganization laws and other laws governing the enforcement of lessors' or creditors' rights in general), (b) that the execution and delivery of this Assignment and

Agreement has been duly authorized, and this Assignment and Agreement are and will remain the valid and enforceable obligations of Assignor in accordance with their terms, (c) that the Assignor has not executed any other assignment of the Sublease, and its right to receive all payments thereunder with respect to the Cars is and will continue to be free and clear of any and all liens, agreements or encumbrances created or suffered by any act or omission on the part of Assignor, (d) Assignor's principal place of business is situate in Des Plaines, Illinois, and (e) that notwithstanding this Assignment and Agreement, Assignor will perform and comply with each and all of the covenants and conditions in the Sublease on Assignor's part to be so performed and complied with.

6. Assignor covenants and agrees with Assignee that in any suit, proceeding or action brought by Assignee under the Sublease for any installment of, or interest on, any rental or other sum owing thereunder with respect to the Cars, or to enforce any provisions of such Sublease, the Assignor will save, indemnify and keep Assignee harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Sublessee thereunder arising out of a breach by Assignor of any obligation in respect of the Cars or such Sublease or arising out of any other indebtedness or liability at any time owing to such Sublessee from Assignor.

7. Assignor will from time to time take such action and execute such documents as Assignee may from time to time reasonably request in order to confirm or further assure and secure the assignment made hereby and the provisions hereof.

8. Assignor agrees that it will not, without the prior written consent of Assignee, enter into any agreement amending, modifying or terminating the Sublease, and any attempted amendment, modification or termination without such consent shall be null and void and of no effect.

9. This Assignment and Agreement shall be governed by the laws of the State of Illinois.

10. This Assignment and Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. Assignor shall cause copies of all notices received in connection with the Sublease to be promptly delivered to Assignee at One IBM Plaza, Chicago, Illinois 60611, or at such other address as the Assignee shall designate.



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective officers thereunto duly authorized, as of the date first above written.

B-W CREDIT CORPORATION

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

UNITED STATES RAILWAY LEASING COMPANY

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS)

) SS.

COUNTY OF C O O K)

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by my duly sworn says that he is Vice President of B-W Credit Corporation and \_\_\_\_\_, to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

STATE OF ILLINOIS)

) SS.

COUNTY OF C O O K)

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that he is Vice President of United States Railway Leasing Company, and \_\_\_\_\_, to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

The undersigned, being the parties described in the foregoing Assignment as the Assignor, Assignee and Sublessee, hereby acknowledge that the Sublease referred to in the Assignment shall be and is at all times subordinate to that certain Lease between B-W Credit Corporation as Lessor and United as Lessee dated as of \_\_\_\_\_, 197\_\_, and covering all of the cars which are the subject matter of the Sublease; provided, however, that Assignee agrees that the Sublessee's right to possession of the Equipment will not be disturbed provided Sublessee shall not be in default in any of the terms and provisions of the Sublease and Assignee shall look solely to the Assignor as Lessee under the Lease for payment or performance of any other sums called for by the Lease or for the performance of any other matters required by the Lease. Sublessee agrees that upon receipt of written notice from the Assignee that an event of default has occurred under the Lease together with a request that all payments due under the Sublease be thereafter made to the Assignee, Sublessee shall make payments accordingly and shall not thereby be deemed in default of any of its undertakings to the Assignor under the Sublease.

UNITED STATES RAILWAY LEASING COMPANY

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

B-W CREDIT CORPORATION

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS)

) SS

COUNTY OF C O O K)

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\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

STATE OF ILLINOIS)

) SS

COUNTY OF C O O K)

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\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me personally appeared \_\_\_\_\_, to be personally known, who being by me duly sworn says that he is Vice President of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and \_\_\_\_\_, to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_